In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1100

RICHARD B. JENNING, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a bench trial in the United States District Court for the District of Oregon, petitioner was convicted on five counts of failing to file income tax returns on behalf of Mamie I. Jenning, as her guardian, and on one count of failing to file a fiduciary income tax return as executor of Mrs. Jenning's estate, all in violation of Section 7203 of the Internal Revenue Code of 1954, 26 U.S.C. 7203. Petitioner was sentenced to six months' imprisonment and placed on probation for three years. The court of appeals affirmed *per curiam* (Pet. App. B). Petitioner's only defense at trial, and his only contention here and in the court below, is that an individual acting as a fiduciary is not a "person" as that term is used in Section 7203.

There is no merit to petitioner's contention. Section 7203 in pertinent part provides:

> Any person * * * required by this title or by regulations made under authority thereof to make a return * * * who willfully fails to * * * make such return * * * shall * * * be guilty of a misdemeanor * * *.

The persons required to make income tax returns are specified by Section 6012 of the Code. Section 6012(b)(2) requires the return of an incompetent individual to be made "by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual," and Section 6012(b)(4) requires the income tax returns of an estate to "be made by the fiduciary thereof." Section 7701(a) defines "person" as including, *inter alia,* both an "individual" and an "estate," and defines "fiduciary" as including "any person acting in any fiduciary capacity for any person." Thus it is clear that petitioner, in his capacities as guardian and executor, was the "person" required to make the income tax returns for Mrs. Jenning and her estate.

Petitioner's argument to the contrary is apparently based on the fact that Section 7701(a)(1), in defining "person", does not explicitly include a "fiduciary." However, any such inclusion would have been circular, for, as is shown above, "fiduciary" is itself defined in part by reference to "person" and includes any "person" acting in any kind of fiduciary capacity. But the language of the statute which petitioner is charged with violating encompasses any "person" who is required to make a return. "Person" is simply the basic term used in the Code for referring to any entity of whatever kind, natural or artificial; it means and includes "an individual, a trust, estate, partnership, association, company or corpor-

ation" and thereby embraces, *inter alia*, all individuals acting as fiduciaries, including petitioner.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.